

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of SBC Communications Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation.

Application 05-02-027
(Filed February 28, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION TO STRIKE TESTIMONY OF ARRIVAL**

This ruling grants the motion filed on July 19, 2005 by the Joint Applicants for an order striking rebuttal testimony submitted by Arrival Communications (Arrival).¹

Applicants move to strike the rebuttal testimony of Arrival witness Michael Mulkey on the basis that the testimony fails to comply with the ALJ ruling dated March 26, 2005, that stated only Applicants were to serve rebuttal testimony. The designated due date for Applicants' rebuttal testimony was

¹ The balance of Applicants' July 19 motion to strike other testimony is being resolved in a separate ruling.

July 8, 2005. Yet, Arrival also served its testimony on July 8, 2005. Applicants argue that allowing Arrival's testimony into the record would be unfair because the schedule does not permit Applicants to submit further rebuttal testimony or to conduct meaningful discovery in advance of evidentiary hearings.

Arrival filed a response to Applicants' motion to strike on July 25, 2005. Arrival argues that Applicants are not placed in any unfair position by the receipt of the Arrival testimony into evidence, and have sufficient opportunity to address the issues raised in the Arrival testimony. Arrival claims that SBC already has complete information concerning the issues raised in Arrival's testimony.

Arrival also argues that its submission of rebuttal testimony on the same date as the Applicants was not "expressly foreclosed" by ALJ ruling, as asserted by Applicants. Arrival also expresses a willingness for Applicants to be allowed to serve surrebuttal to the Arrival testimony if they would not oppose submission of the testimony, although Applicants have refused this offer.

Arrival claims that allowing its rebuttal testimony to remain in the record will not extend the hearings in this matter, noting that Applicants did not submit a cross examination estimate for the Arrival witness in their submission to the ALJ. If Applicants' motion to strike is granted, however, Arrival claims it will have to conduct cross-examination of one or more of the Applicants' witnesses that would not otherwise be required.

Discussion

It is ruled that the motion to strike the Arrival testimony is hereby granted. Arrival was provided the opportunity to submit testimony on June 24 along with other intervenors, but did not do so. The adopted schedule does not provide for a subsequent submission of testimony by intervenors. The ALJ had previously

stated by ruling that only the Applicants were to serve Rebuttal testimony. Yet, Arrival served rebuttal testimony on July 8 anyway. It would not be fair to single out Arrival for special treatment by allowing it to serve rebuttal testimony in response to other parties while denying the same opportunity to all other intervenors. Setting such a precedent could open the door for other requests for special exceptions and deviations from adopted schedules and procedures in the case. In the interests of maintaining integrity in the process and schedule, Arrival's rebuttal testimony shall be stricken. Arrival has not identified any extraordinary or overriding factors that would warrant granting it special treatment in this manner.

IT IS RULED that the Applicants' motion to strike the Rebuttal Testimony of Arrival, served on July 8, 2005, is hereby granted.

Dated July 27, 2005, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to Strike Testimony of Arrival on all parties of record in this proceeding or their attorneys of record.

Dated July 27, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.